

# Kinsta Inc. Terms of Service

Updated on April 11, 2022

Thank you for choosing Kinsta!

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY, INCLUDING THE BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER IN SECTION 14 WHICH AFFECTS HOW DISPUTES ARE RESOLVED.**

By using the Kinsta Services, you agree to these Terms of Service. If you do not accept these Terms, do not register for an Account, or purchase, access, or use the Kinsta Services in any way.

## 1. Introduction

1. Kinsta Inc. (hereinafter, “**Kinsta**,” “**we**,” “**us**,” or “**our**”) provides managed hosting services, software, and support through our MyKinsta application; DevKinsta local website development software; Kinsta Academy educational platform; and other related websites (including kinsta.com), forums, communities, events, applications, services, software, and personnel (collectively, the “**Services**”). The individuals or organizations which purchase, access, or use the Services are referred to in this Agreement as “**Client**,” “**you**,” or “**your**”. The websites created and managed by our Clients through our Services are referred to in this Agreement as “**Client Websites**”. The third-party visitors of Client Websites are referred to in this Agreement as “**End Users**”.
2. These Terms of Service (“**Terms**”), together with our Service Level Agreement (“**SLA**”) and Data Processing Addendum (“**DPA**”) (all located at <https://kinsta.com/legal/>) form a binding legal agreement between Kinsta and you. The Terms, SLA, and DPA are collectively referred to as the “**Agreement**”.
3. You represent, warrant, and agree that you have the full power and authority to enter into and perform under the Agreement and form a binding contract on behalf of yourself or on behalf of the person, organization, entity, or group that you represent.
4. **Updates to the Terms.** We reserve the right to make changes to these Terms at any time in our sole discretion. If we make changes to these Terms, we will provide notice of such changes by revising the date at the top of these Terms. Your continued use of our

Services following notification of changes will constitute your acceptance of such changes. Please periodically review these Terms and check for any updates.

## 2. Account and Eligibility

1. In order to access the Services, you will be required to register a user account with Kinsta (the “**User Account**”). In order to host Client Websites on the Services, a user must create a hosting plan subscription (the “**Hosting Account**”). A User Account and a Hosting Account are collectively referred to as an “**Account**” in these Terms. The user who initially creates the Hosting Account may grant different levels of access and permission to other authorized users of the Hosting Account. The user who initially creates the Hosting Account may also transfer control or ownership of the Hosting Account to another user. All users of the Hosting Account, regardless of the level of access or permission they are granted, must register a User Account and agree to be bound by these Terms.
2. You agree that the email address you provide when you create your User Account (“**Designated Email Address**”) shall be used for official notification purposes related to your Account and the Services. You agree to verify that email sent by Kinsta successfully reaches the inbox associated with your Designated Email Address and to update your Designated Email Address when necessary. In addition, you acknowledge that Kinsta may post official notifications related to your Account and the Services within MyKinsta. You agree that if you do not read email sent by Kinsta, regularly log into MyKinsta to read posted notifications, and take corresponding action, Kinsta’s performance of the Services may be negatively impacted any such impact will not be covered by [the SLA](#).
3. You must be at least 13 years of age (or any higher minimum age in the jurisdiction where you reside) to access or use the Services. If you are at least 13 years of age (or any higher minimum age in the jurisdiction where you reside) but have not yet reached the age of majority in your jurisdiction (usually 18 years of age) (a “**Minor**”), then please read these Terms with your parent or legal guardian. The parent or legal guardian of a Minor shall be bound by these Terms and responsible for all access and use of the Account or Services, including purchases, by the Minor.
4. You are not eligible to use the Services or register for an Account if (a) you are located in, under the control of, or a national or resident of any country to which the United

States has embargoed goods or services, including, but not limited to, Iran, Syria, Cuba, North Korea, and the Crimea Region of Ukraine or (b) you are subject to economic or other sanctions by the United States, European Union, United Nations, or any other government or international body.

5. By using the Services or registering for an Account, you agree to (a) provide accurate, truthful, current, and complete information; (b) maintain and promptly update your Account information upon any changes; (c) maintain the security of your Account by protecting your password and restricting access to your Account and Service plan; (d) promptly notify Kinsta if you discover or otherwise suspect any security breaches or unauthorized access related to your Account or the Services; (e) take responsibility for all activities that occur under your Account and accept all risks of any authorized or unauthorized access to your Account; and (f) not open multiple Accounts in order to bypass any restrictions or overage charges set forth by Kinsta.
6. If there is a dispute about the ownership of an Account, we reserve the right to investigate and determine ownership of the Account based on our reasonable judgment.

### 3. Fees and Payment

1. Client shall timely pay all required fees as determined by Kinsta in its sole discretion (the “Fees”) by a valid payment method (e.g., credit card). **You acknowledge and agree that (a) subscription Fees will be prepaid, meaning that subscription Fees will be paid at the beginning of the subscription period, (b) that on a monthly or annual basis your Hosting Account will be automatically renewed, and (c) Fees will be automatically charged to the valid payment method you provided. To avoid automatic payments and renewal, you may cancel your Hosting Account pursuant to Section 10 below.**
2. If you fail to timely pay your Fees, Kinsta may terminate or suspend your Hosting Account and the Services pursuant to Section 10. Disputed charges or chargebacks associated with any Hosting Account may, at Kinsta’s discretion, result in suspension or termination of the Services.
3. If you use the Services for or on behalf of your own third-party customers to design, build, or manage Client Websites, you remain fully responsible for all payments of Fees

in connection with your Hosting Account, even if your own customers fail to make payment to you.

4. Fees are stated in U.S. Dollars and, except as otherwise indicated at checkout, do not include any taxes (such as value added tax, sales tax, goods and services tax, etc.), levies or duties imposed by taxing authorities. You are responsible for paying any such taxes, and you agree to indemnify and hold Kinsta harmless from and against any liabilities, interest, penalties, or fees assessed against Kinsta arising from your failure to pay any such taxes.
5. **Kinsta reserves the right to change its Fees at any time, upon prior advance notice to you.** If you do not agree to a Fee change, you may cancel the Services without incurring the changed Fee, but no refund will be payable from any Fees you previously paid.
6. **If you received a promotional Fee or free trial, Kinsta will automatically renew your Hosting Account and charge your payment method at the standard (i.e., non-promotional) Fee upon expiration of the promotional or free trial period.**

## 4. Client Content

1. Kinsta may enable you and End Users to post, import, upload, store, share, send, display, or otherwise transmit text, data, information, code, software, domain names, materials, designs, photos, images, media files, logos, or any other content to or through the Services for the purpose of creating, managing, and operating your Client Websites (collectively, and together with the Client Websites, the "**Client Content**").
2. Without limiting the provisions of Section 11, Kinsta does not - and cannot - prevent or remediate all security incidents, including Malicious Activity (defined below), in connection with the Services or Client Content.
3. You retain all rights to and ownership of your Client Content. You will provide Kinsta with Client Content in a form requiring no processing or modification by Kinsta. You are also obligated to provide all notices to, and obtain and maintain any consents from, any person, including End Users, as required by applicable law or regulation in connection with Client Content.
4. **YOU ARE SOLELY AND FULLY RESPONSIBLE FOR CLIENT CONTENT, WHICH INCLUDES CLIENT WEBSITES.** Without limiting the foregoing, you are solely and fully

responsible for (a) the design and development of the Client Content (b) all necessary changes to the Client Content, such as changes to the appearance of Client Websites; (c) all code development, creation, editing, writing, testing, auditing, modification, and optimization necessary or desirable for the operation of the Client Content; and (d) optimizing the performance of the Client Content. If you choose to host the Client Content with a different hosting provider you are solely and fully responsible for migration of the Client Content to the new hosting provider.

5. In order to provide the Services, Kinsta must access and use the Client Content in a variety of ways on your behalf. For this reason, **for the sole and limited purpose of providing you the Services**, you hereby grant to Kinsta a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to access, use, copy, modify, publicly display, publicly perform, reproduce, translate, create derivative works from, and distribute Client Content, in whole or in part.
6. You represent, warrant, and agree that Client Content shall not (a) infringe, misappropriate, or violate any patent, copyright, trademark, trade secret, confidentiality, moral, or privacy right, or any other proprietary or intellectual property right; (b) violate or promote the violation of any law; (c) be defamatory, fraudulent, false, misleading, or deceptive; (d) constitute, consist of, or enable spam, phishing attempts, “chain letters”, “pyramid schemes”, or other Malicious Activity (defined below); (e) be pornographic, vulgar, exploitative of children, or otherwise obscene; (f) include nudity or sex-related/themed products, services, or other material; or (g) promote violence, discrimination, bigotry, racism, hatred, harassment, or harm against any individual or group. Determining whether Client Content is in violation of these Terms shall be at Kinsta’s sole discretion.
7. Kinsta has no obligation to monitor, validate, correct, or update Client Content in any way. Kinsta may, in its sole discretion, alter, remove, or refuse to display any Client Content that is in violation of these Terms.

## 5. Client Submissions

1. Separate and apart from Client Content, we welcome questions, comments, suggestions, and ideas about Kinsta and our Services (“**Submissions**”). If you provide a

Submission, whether by email or otherwise, you agree that it is non-confidential (unless we state otherwise in writing) and shall become the sole property of Kinsta.

2. Kinsta shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of Submissions, along with any changes, modifications, or upgrades we make to the Services based on the Submission, for any purpose, commercial or otherwise. You agree that Kinsta is not obligated to provide acknowledgment or compensation to you in exchange for Submissions.

## 6. Client Obligations and Acceptable Use

1. **Be decent.** Do not transmit any information to or about Kinsta or its other Clients, End Users, employees, or representatives that is considered, in Kinsta's sole determination, to be demeaning, harassing, hurtful, abusive, derogatory, insulting, defamatory, false, misleading, or otherwise offensive.
2. **Compliance with Laws.** You agree to use our Services in compliance with applicable local, state, national, and international laws and regulations, including, but not limited to, United States trade sanctions and export-control laws and applicable data privacy laws. You may not use the Services for or on behalf of any person or organization subject to embargoes, sanctions, or otherwise designated on any list of prohibited parties, including but not limited to lists maintained by the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority. You agree to cooperate with Kinsta, including the provision of information reasonably requested by Kinsta, to ensure Kinsta's compliance with applicable laws in connection with your use of the Services.
3. You are responsible for and must provide all telephone, computer, hardware, internet connections, and any other equipment and services necessary to access the Services.
4. **Malicious Activity.** You agree not to engage in, attempt to engage in, or encourage or assist others to engage in any Malicious Activity while accessing or using the Services. "**Malicious Activity**" means any of the following alone or in combination: (i) use, display, mirror, or frame the Services or any individual element within the Services; (ii) access or tamper with non-public areas of the Services; (iii) test the vulnerability of any Kinsta

system or breach any security or authentication measures; (iv) circumvent any measure implemented by Kinsta or any third party to protect the Services; (v) copy, modify, decompile, disassemble, reverse engineer, tamper with, or attempt to derive the source code of any part of the Services; (vi) interrupt, damage, destroy, or limit the functionality of the Services; or (vii) host, upload, or in any way transmit malware, viruses, or any other malicious code or activity.

- a. Clients shall cooperate with Kinsta to promptly isolate, mitigate, and eliminate any Malicious Activity and take appropriate corrective action.
  - b. If Malicious Activity is determined by Kinsta to have occurred unintentionally as part of a website migration performed by the Client, the Client shall be afforded the opportunity to promptly eliminate the Malicious Activity. If the Client fails to promptly eliminate the Malicious Activity as directed by Kinsta, then Kinsta will eliminate the Malicious Activity, and a \$100.00 fee shall be charged to Client and paid through Client's default payment method (including auto payment).
5. **Limits of Use.** You agree to cooperate with Kinsta in ensuring that resource utilization is accurately measured. Do not overburden the Services or place excessive burdens on any CPUs, servers, or other resources used in connection with the Services.
- a. Do not use excessive bandwidth or data transfer. If your use of bandwidth or data transfer exceeds the use by similarly situated Clients, we may place restrictions on your use of the Services until your use corresponds with that of similarly situated Clients or offer to move you to a metered plan.
  - b. If the Service plan to which you subscribe sets out an amount of data transfer, number of visits, or disk space you agree not to exceed this amount. If you exceed this amount, your data transfer, visits, or disk space over the contracted amount will be billed at our then-current rate (<https://kinsta.com/knowledgebase/overages/>). In addition, if you exceed the amount of data transfer, the number of visits, or the amount of disk space included in your Service plan, at our sole discretion we may limit your use of the Services. You can read about how Kinsta counts visits in our knowledge base article on visitor counts (<https://kinsta.com/knowledgebase/visitor-counts/>).
  - c. If your use of the Services results in activity that is harmful to the performance of disk space resources, such as the creation of large system-generated or application-generated files (e.g. log files, backup files, and cache files), we may

take remedial action, including removal of system/application-generated files and/or limiting your use of the Services, as necessary to protect the stability of the Services. You agree to cooperate with us in ensuring that your use of the Services does not result in harm to the performance of disk space resources.

- d. Our plans may allow you to send a certain amount of transactional emails per day, and you agree not to exceed the maximum amounts listed on our website. If you exceed your daily transactional email quota, we may offer to upgrade your plan, or you may use a third-party provider to send transactional emails. If you refuse to upgrade your plan or use a third-party provider, we may refuse to deliver emails on your behalf.
- e. Do not use the Services to provide open proxies, Internet Relay Chat (irc), for cryptocurrency mining activity, or for any other activity for which the Services are not promoted on our website.
- f. Do not use the Services for bandwidth-intensive activities, including (but not limited to) the distribution or serving of video files, audio files, and downloadable digital assets (e.g., downloadable zip and pdf files). Client Websites that incorporate these types of activities should utilize a suitable third-party storage provider, ensure these assets are served by a content delivery network (CDN), or otherwise configure Client Websites to deliver these assets using a method that ensures Kinsta's network does not incur the bandwidth associated with these activities. Configuration of Client Websites to utilize an appropriate delivery method for these activities is the responsibility of the Client.

## 7. Kinsta's Property and Your License Rights

1. With the exception of Third-Party Services, the Services are the sole and exclusive property of Kinsta and not the Client. Without limiting the generality of the foregoing, all rights, title, and interest in and to the Services, including any and all software, servers, artwork, graphics, images, website templates and widgets, literary work, source and object code, computer code (including html), applications, audio, music, video and other media, designs, animations, interfaces, documentation, derivatives and versions thereof, the look, feel, and arrangement of the Services, methods, products, algorithms, data, logs, interactive features and objects, advertising and acquisition tools and methods,



inventions, trade secrets, logos, domains, customized URLs, trademarks, service marks, trade names and other proprietary identifiers, whether or not registered and/or capable of being registered, and any derivations thereof are owned by and/or licensed to Kinsta.

2. Subject to your compliance with these Terms, you are granted a limited, non-exclusive, non-transferable, non-sublicensable, fully revocable license to access and use the Services for the sole purpose of creating, managing, and operating your Client Website. You shall not rent, lease, license, sell, distribute, or otherwise transfer the Services to third parties, except as permitted by these Terms or otherwise authorized by Kinsta in writing. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Kinsta or its licensors, except for the licenses and rights expressly granted in this Section 7.2. Upon termination of these Terms or the Services, you shall no longer have any right or license to the Services, and you must immediately cease use of the Services and destroy all copies in your possession.
3. We may, in our discretion and without liability to you, with or without prior notice and at any time, modify or discontinue, temporarily or permanently, any portion of our Services.

## 8. Copyright and Infringer Policy

1. In accordance with the Digital Millennium Copyright Act (“DMCA”) and other applicable law, Kinsta has adopted a policy of terminating, in appropriate circumstances and in Kinsta’s sole discretion, users who are deemed to be repeat infringers of other’s copyrighted property. Kinsta may also, in our sole discretion, limit access to the Services and/or terminate the Accounts of any Clients who we believe may infringe any intellectual property rights of others, whether or not there is any repeat infringement.
2. If you believe that anything on the Services infringes upon any copyright which you own or control, you may file a notification of such infringement with the Kinsta Copyright Agent as set forth below.

Attn: Copyright Agent

Kinsta Inc.

8605 Santa Monica Blvd #92581

West Hollywood, CA 90069

United States

[DMCA@kinsta.com](mailto:DMCA@kinsta.com)

3. Please see [17 U.S.C. §512\(c\)\(3\)](#) for the requirements of a proper notification. You should note that if you knowingly misrepresent in your notification that the material or activity is infringing, you will be liable for any damages, including costs and attorneys' fees, incurred by us or the alleged infringer as the result of our relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing.

## 9. Third-Party Services

1. The Services may display, permit access to or use of, install, or incorporate third-party content, promotions, websites, apps, software, services, and resources (collectively "**Third-Party Services**") that are not under Kinsta's control. Third-Party Services are available only as a convenience to you, and we are not responsible for the products, services, or other content that are available from Third-Party Services. You acknowledge that any Third-Party Services that you use in connection with the Services are not controlled by Kinsta, and you take sole responsibility and assume all risk arising from your interaction with or use of any Third-Party Services.
2. You are responsible for reading, understanding, and complying with the license, terms and conditions, and privacy policy that applies to your use of any Third-Party Services. Reference to or use of any Third-Party Services by Kinsta does not necessarily constitute or imply endorsement, sponsorship, or recommendation thereof by Kinsta.

## 10. Termination

1. If you are in breach of these Terms or any other policies, terms, or agreements Kinsta has in place from time to time, Kinsta may, immediately and at our option, terminate this Agreement and/or terminate or suspend your access to the Services and your Account. Upon any such termination or suspension, you are not permitted to register for another Account or access the Services without our prior written permission.
2. The Services and these Terms may be terminated by either party for convenience by giving the other party fourteen (14) days prior written notice. Kinsta may allow the Client

to terminate their Hosting Account independently [within the MyKinsta application](#) or by [contacting Kinsta's customer service teams](#) within the MyKinsta application.

3. Any provision of these Terms that, in order to give proper effect to its intent, should survive the termination, expiration, discontinuance, or suspension of these Terms or the Services, will survive such termination, expiration, discontinuance, or suspension of these Terms or the Services.

## 11. DISCLAIMER OF WARRANTIES

1. EXCEPT AS OTHERWISE SET FORTH IN THESE TERMS, ALL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND KINSTA HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
2. WITHOUT LIMITING THE FOREGOING, KINSTA MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL (A) MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS; (B) OPERATE WITHOUT INTERRUPTION; (C) ACHIEVE ANY INTENDED RESULT; (D) BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES; OR (E) BE SECURE, ACCURATE, COMPLETE, FREE OF MALICIOUS ACTIVITY OR HARMFUL CODE, OR ERROR FREE.

## 12. LIMITATION OF LIABILITY

1. NEITHER KINSTA, ITS OWNERS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS, AFFILIATES, SUPPLIERS, OR LICENSORS, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, SYSTEM FAILURE, OR LOSS, THEFT OR DESTRUCTION OF DATA OR CLIENT CONTENT, OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THE

AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT KINSTA HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A LIMITED REMEDY SET FORTH IN THE AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

2. IN NO EVENT WILL KINSTA'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED (A) THE AGGREGATE AMOUNT OF FEES PAID OR OWED BY YOU TO KINSTA DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM, OR (B) ONE HUNDRED DOLLARS (\$100.00), WHICHEVER IS GREATER.
3. THE EXCLUSIONS AND LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH IN THIS SECTION 12 ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN KINSTA AND YOU.
4. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, THE LIMITATIONS OF SECTIONS 11 AND 12 WILL APPLY TO YOU TO THE FULLEST EXTENT PERMITTED BY LAW.

## 13. Indemnity

1. You agree to defend, indemnify, and hold harmless Kinsta (and each of our owners, officers, directors, employees, agents, contractors, licensors, and affiliates) (collectively the "**Kinsta Indemnitees**") from and against any and all losses, costs, expenses, damages, injuries, and/or liability of any kind, including attorney's fees, that a Kinsta Indemnitee may incur or suffer as a result of any claims, suits, proceedings, or investigations asserted or commenced by any third party, which arise out of or are in any way connected with (a) your access or use of, or conduct in connection with, our Services; (b) Client Content, Client Websites, or Submissions; (c) your breach or alleged breach of the Agreement; or (d) your violation of any law or the rights of a third party.

2. We reserve the right, in our sole discretion, to control any action or proceeding, including selection of counsel, and determine whether we wish to settle it, and if so, on what terms, in which event you will cooperate with us in asserting any available defenses.

## 14. Dispute Resolution

1. PLEASE READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES WITH KINSTA AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.
2. We want to address your concerns without resorting to a formal legal case. Before filing a formal legal claim against Kinsta, please contact us at [legal@kinsta.com](mailto:legal@kinsta.com). We'll try to resolve the dispute and address your concerns. If a dispute is not resolved within 15 days after submission, you or Kinsta may bring a formal proceeding as set forth in this Section 14.
3. Any dispute, controversy, or claim arising out of or relating to the Services or the Agreement, or the breach thereof, shall be exclusively settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; provided, however, that you and Kinsta are not required to arbitrate any dispute in which either party seeks equitable or injunctive relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, patents, or other confidential information or intellectual property.
4. You and Kinsta agree that arbitration will occur exclusively in metropolitan Boston, Massachusetts (i.e., the city of Boston or its surrounding suburbs or cities), and that arbitration will be conducted confidentially by a single arbitrator.
5. If for any reason this agreement to arbitrate does not apply to the dispute, you and Kinsta agree that any judicial proceeding, including any appeal of an arbitration award, will be brought exclusively in the federal or state courts located in Suffolk County, State of Massachusetts. Both you and Kinsta exclusively consent to venue and personal jurisdiction in Suffolk County, State of Massachusetts, and **BOTH KINSTA AND YOU WAIVE THE RIGHT TO A JURY TRIAL**. If a judicial proceeding is brought in the state courts of Massachusetts under this section 14.5, the parties consent and agree to the

transfer of such proceeding to the Business Litigation Session of the Superior Court for Suffolk County.

6. The Agreement and the resolution of any disputes shall be governed by and construed in accordance with the laws of the State of Massachusetts, USA without regard to its conflict of laws principles.
7. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU WAIVE ANY RIGHT TO COMMENCE A CLASS ACTION, CLASS ARBITRATION, OR OTHER REPRESENTATIVE ACTION OR PROCEEDING.

## 15. CCPA Certification

1. This Section 15 applies only to the extent that (a) Kinsta receives and processes End User personal information for or on behalf of the Client and (b) the California Consumer Privacy Act (“CCPA”) applies to such End User personal Information.
2. Kinsta certifies, understands, and agrees as follows:
  - a. Kinsta is a service provider with respect to End User personal information.
  - b. Kinsta shall not sell End User personal information.
  - c. Kinsta shall not retain, use, or disclose End User personal information for any purpose other than the specific purpose of performing the Services under the Agreement, or as otherwise permitted under the CCPA.
3. Any undefined terms in this Section 15 shall have the meanings set forth in the CCPA.

## 16. Miscellaneous

1. The Agreement constitutes the entire understanding and agreement of the parties and supersedes all prior and contemporaneous understandings and agreements between the parties regarding its collective subject matter.
2. You may not assign any of your rights or obligations under the Agreement without prior written consent from Kinsta. Kinsta may assign any or all of its rights under the Agreement, in whole or in part, without obtaining your consent or approval.
3. Our failure or delay in exercising any right, power, or privilege under the Agreement shall not operate as a waiver thereof.

4. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement, all of which shall remain in full force and effect.